

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANYSA NGETHPHARAT, JAMES
KELLEY,

Plaintiffs,

v.

STATE FARM MUTUAL
INSURANCE COMPANY, et al.,

Defendants.

CASE NO. C20-454 MJP

FAYSAL A JAMA,

Plaintiff,

v.

STATE FARM FIRE AND
CASUALTY COMPANY,

Defendant.

CASE NO. C20-652 MJP

ORDER DENYING MOTION TO
COMPEL

1 This matter comes before the Court on Plaintiffs’ Motion to Compel filed jointly in both
 2 of the above-captioned matters pursuant to Local Rule 37. (Ngethpharat, Dkt. No. 127; Jama,
 3 Dkt. No. 99.) Having reviewed the Motion and supporting materials, the Court DENIES the
 4 Motion.

5 BACKGROUND

6 The Court earlier ordered the production of a class list of 150 randomly-identified
 7 potential class members in the above-captioned cases, along with the property damage portion of
 8 each claim file. (Ngethpharat, Dkt. No. 76.) Plaintiffs now want a larger sample of the potential
 9 class members and the property damage portions of the claim file for each person in the sample.
 10 But the scope of the discovery requested by the present Motion is unclear. In April 2021,
 11 Plaintiffs sent an email asking for “roughly 800” claim files and an updated class list. (Ex. G to
 12 the Declaration of Eric Robertson (Ngethpharat, Dkt. No. 126-7).) After State Farm wrote an
 13 email back, Plaintiffs declared the parties at an impasse without ever having held a telephonic or
 14 in-person discussion. In May 2021, Plaintiffs then served new interrogatories and requests for
 15 production, which sought an expanded sample of 1,820 potential class members and the property
 16 damage portion of their claim files. (Robertson Decl. Ex. H (Ngethpharat, Dkt. No. 126-8).)
 17 There is no evidence that Plaintiffs took any steps to meet and confer after serving these new
 18 requests and there is no evidence as to State Farm’s responses to these new requests.

19 ANALYSIS

20 Local Rule 37(a)(1) requires the parties to conduct an in-person or telephonic meet and
 21 confer before moving to compel and to provide evidence of such efforts:

22 Any motion for an order compelling disclosure or discovery must include a certification,
 23 in the motion or in a declaration or affidavit, that the movant has in good faith conferred
 24 or attempted to confer with the person or party failing to make disclosure or discovery in
 an effort to resolve the dispute without court action. The certification must list the date,

1 manner, and participants to the conference. If the movant fails to include such a
2 certification, the court may deny the motion without addressing the merits of the dispute.
A good faith effort to confer with a party or person not making a disclosure or discovery
3 requires a face-to-face meeting or a telephone conference.

4 Local Rule 37(a)(1). As the Rule makes clear, “the court may deny the motion without
addressing the merits” if there is no evidence of the parties meet and confer compliance. Id.

5 Plaintiffs have failed to show compliance with the Local Rules’ meet and confer
6 requirement. It appears that Plaintiffs simply sent one email demand for an 800-claim sample
7 and when State Farm did not capitulate, they declared the parties at an impasse without ever
8 having picked up the telephone. And it appears that Plaintiffs made no effort to meet and confer
9 on their new May request for 1,820 claim file sample. These efforts or lack thereof fall well short
10 of satisfying the Local Rules’ meet and confer requirement. Plaintiffs compound these failures
11 by not identifying the specific relief sought. The Court is left to guess whether Plaintiffs demand
12 discovery consistent with their email seeking an 800-claim sample or their new written discovery
13 requests regarding 1,820 claim sample. The Court cannot compel further discovery where the
14 requested relief is ambiguous. For these reasons, the Court DENIES the Motion.

15 Should Plaintiffs seek to renew their Motion, they must conduct a face-to-face or
16 telephonic/video conference to discuss the precise discovery sought before filing any motion to
17 compel (which must be filed using the expedited joint motion format of Local Rule 37). At any
18 such meet and confer, the Parties should discuss and attempt to reach agreement on: (1) the size
19 of the sample; (2) whether the request can be limited to the Autosource Reports and evidence
20 showing the amount paid on each claim; and (3) any other means of reaching an agreement
21 without Court intervention. State Farm should also be prepared to identify and discuss: (1) the
22 amount of time it would take to identify and produce the Autosource Report(s) from each claim
23 file, excluding secondary attorney review; (2) the amount of time it would take to identify and
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1 produce evidence as to how much each insured was paid on the total loss claim, excluding
2 secondary attorney review; and (3) the amount of time it would take to locate and produce the
3 property damage portion of each claim file, excluding secondary attorney review.

4 Separately, the Court notes that the Parties apparently came to a side agreement regarding
5 State Farm's compliance with the Court's prior order on the first motion to compel. (See
6 Ngethpharat, Dkt. No. 127 at 9.) This is inappropriate. When the Court sets a deadline, the
7 Parties must comply with it or seek and obtain leave of Court before making any deviation,
8 agreed or not. This ensures the Court is made aware of any issues that might impact the trial date
9 and case deadlines and to find solutions to problems when they arise.

10 The clerk is ordered to provide copies of this order to all counsel.

11 Dated June 14, 2021.



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13 Marsha J. Pechman
14 United States Senior District Judge
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